72-449

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IN THE

Supreme Court of the United States

No. 72-449

CAPITOL TILE AND MARBLE, INC.
and
THE HOME INDEMNITY COMPANY, *Petitioners*

vs.

WILLIAM E. DEESE, *Respondent*

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Capitol Tile and Marble, Inc., and the Home Indemnity Company, by their attorneys, Heeney, McAuliffe and McAuliffe, respectfully petition this Honorable Court for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit, for a review of a final judgment of that Court, and for reasons therefor state:

I. OPINION OF COURTS BELOW

All Orders and Opinions in this case are unreported and are as follows:

A. Compensation Order of the Deputy Commissioner, United States Department of Labor, Bureau of Employees' Compensation, District of Columbia Compensation District, dated December 8, 1969, appended hereto.

B. Opinion and Order of the United States District Court for the District of Columbia dated December 23, 1970, appended hereto.

C. Opinion and Order of the United States District Court for the District of Columbia dated February 17, 1971, appended hereto.

D. Order of the United States Court of Appeals for the District of Columbia dated June 19, 1972, appended hereto.

II. GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

Judgment was entered in this case in the United States Court of Appeals for the District of Columbia Circuit on June 19, 1972, affirming the judgment of the United States District Court for the District of Columbia. Jurisdiction to review this judgment of the United States Court of Appeals for the District of Columbia Circuit is granted by 28 U.S.C. 1254 (1).

III. QUESTIONS PRESENTED

A. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CAN BY "LEGISLATIVE INTERPRETATION" ABROGATE A CLEAR AND UNAMBIGUOUS PROVISION OF AN ACT OF CONGRESS, AS APPLIED TO THE DISTRICT OF COLUMBIA.

B. WHETHER THE DISTRICT OF COLUMBIA HAD THE NECESSARY SUBSTANTIAL OR SUFFICIENT INTEREST IN THIS CASE TO CONSTITUTIONALLY APPLY ITS COMPENSATION LAWS TO THE PARTICULAR WORK RELATED INJURY.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES

A. Fifth Amendment to the Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

B. Fourteenth Amendment to the Constitution of the United States, Section 1.:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

C. District of Columbia Code, Section 36-501:

> "The provisions of chapter 18 of title 33, U. S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee or an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such

provisions the term 'employer' shall be held to mean every person carrying on any employment in the District of Columbia, and the term 'employee' shall be held to mean every employee of such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)"

D. 33 U.S.C. 921:

"(a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

"(b) If not in accordance with law, a compensation order may be suspended or set aside, with in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the United States District Court for the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto,

that such irreparable damage would result to the employer, and specifying the nature of the damage.

"(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

"(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title."

V. STATEMENT OF THE CASE

William E. Deese, hereinafter referred to as the Employee, was injured on April 20, 1968, while in the employ of Capitol Tile and Marble, Inc., hereinafter referred to along with its insurer, The Home Indemnity Company, as the Employer. The injury took place at the job site on the campus of the University of Maryland in College Park, Maryland. The Employee subsequently on April 16, 1969, filed a claim for workmen's compensation in the District of Columbia, pursuant to the provisions of the Longshoremen's and Harbor Workers' Compensation Act of March 4,

1927, 44 Stat. 1424, as amended, 33 U.S.C. 901, *et seq.*, as made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600, D. C. Code 36-501.

The evidence before the Deputy Commissioner at the hearing on October 21, 1969, showed the following:

A. The injury occurred in Maryland.

B. The Employee was a resident of Maryland.

C. The contract of employment was made in Maryland.

D. The vast majority of the Employee's work took place in Maryland; viz. sixty-two per cent (62%) in Maryland, thirty-two per cent (32%) in the District of Columbia, and six per cent (6%) in Virginia.

E. The Employer is a Maryland corporation with its principal office located in Maryland.

F. Seventy-five per cent (75%) of the Employer's business was conducted in Maryland, as opposed to approximately eighteen per cent (18%) in the District of Columbia.

The Deputy Commissioner on December 8, 1969, found that the claim did not come under the jurisdiction of the District of Columbia Workmen's Compensation Act.

The Employee then appealed this decision to the United States District Court for the District of Columbia on January 7, 1970. There being no dispute as to the material facts of this case, the parties filed Motions for Summary Judgment. On December 23, 1970, Judge Oliver Gasch granted the Employee summary judgment, finding that the Deputy Commissioner was incorrect in holding that there was no jurisdic-

tion for this claim under the Workmen's Compensation Act of the District of Columbia.

Subsequently on February 2, 1971, the Employer filed a Motion to Vacate this judgment and to Dismiss the Case. This Motion was based upon the fact that the exclusive method of judicial review of Compensation Orders as provided by the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 921, provides that an appeal from a Deputy Commissioner's Compensation Order must be taken in the judicial district in which the injury occurred, the injury in this case having occurred in Maryland.

On February 17, 1971, the Employer's Motion to Vacate the judgment already entered and to Dismiss the Case was denied by Judge Gasch.

The Employer thereupon noted an appeal from both Orders, and both appeals were consolidated in the United States Court of Appeals for the District of Columbia Circuit. Subsequently on June 19, 1972, the Court of Appeals affirmed the United States District Court.

VI. ARGUMENT

A. Whether the United States Court of Appeals for the District of Columbia Circuit Can by "Legislative Interpretation" Abrogate a Clear and Unambiguous Provision of an Act of Congress, as Applied to the District of Columbia.

The United States Court of Appeals for the District of Columbia Circuit has by judicial fiat, under the guise of interpreting legislative intent, changed the clear meaning of a provision of an Act of Congress, 33 U.S.C. 901-950. This Act, known as the Longshoremen's and Harbor Workers' Compensation Act, was adopted as the Workmen's Compensation

Act for the District of Columbia by Public Act No. 419 of the Seventieth Congress, District of Columbia Code 36-501. The exclusive method of judicial review of Compensation Orders is provided by 33 U.S.C. 921 (b) and (d). As noted above, the United States Congress adopted Section 921 intact and without change, as a part of the Workmen's Compensation Law of the District of Columbia, and thereby provided the same, and the only method of appellate review as existed in any other case brought under the Longshoremen's and Harbor Workers' Compensation Act.

In every case found by counsel interpreting 33 U.S.C. 921 (b) and (d), it has been held that the designation of the judicial district in which the proceedings for review must be brought is jurisdictional, and does not relate merely to venue. *Continental Fire and Casualty Insurance Co.* v. *O'Leary,* 9th Cir., 1956, 236 F.2d 282; *Bassett* v. *Massman Construction Company,* 8th Cir., 1941, 120 F.2d 230, cert. den., 314 U.S. 648, 62 S.Ct. 92; *Hughes* v. *Quigley,* D.C.NJ., 184 F.Supp. 568; *Independent Pier Co.* v. *Norton,* D.C.Pa., 1942, 47 F.Supp. 1020. It is now apparent that the United States Court of Appeals for the District of Columbia Circuit, alone, is in disagreement with the Eighth and Ninth Circuits in their interpretation and application of 33 U.S.C. 921.

There was no dispute in this case that the injury occurred in College Park, Maryland. This fact required that any appeal from the Deputy Commissioner's Compensation Order of December 8, 1969, should have been prosecuted in the United States District Court for the District of Maryland. Therefore, the United States District Court for the District of Co-

lumbia had no jurisdiction to determine any question arising under the Deputy Commissioner's Order and the Court's finding as to its own jurisdiction was incorrect.

It is respectfully submitted that as the decision of the United States Court of Appeals for the District of Columbia Circuit in this case is in direct and unyielding conflict with the decisons of the United States Courts of Appeal for the Eighth and Ninth Circuits, and as the United States Court of Appeals for the District of Columbia has, under the euphemism of "interpretation of legislative intent" modified a clear and unambiguous provision of an Act of Congress; certiorari to the United States Court of Appeals for the District of Columbia Circuit should be granted.

3. Whether the District of Columbia Had the Necessary Substantial or Sufficient Interest in This Case to Constitutionally Apply Its Compensation Laws to the Particular Work Related Injury.

This case presents for resolution the precise question left open by this Court in *Cardillo* v. *Liberty Mutual Insurance Company,* 330 U.S. 469, 67 S.Ct. 801 (1947). In finding the jurisdictional section of the Act constitutional *as applied* to the facts of that case, this Court at pages 475-476 said:

> "Whether this language covers employees who are more *remotely related* to the District is a matter which we need not discuss and any arguments based upon such hypothetical situations are without weight in this case." (Emphasis supplied.)

The application of the broad language of the Act so as to include the factual situation of this case does violence to the due process and full faith and credit clauses of the Constitution, as interpreted by previous decisions of this Court.

The essence of the compensation jurisdictional question here is not whether Maryland or the District of Columbia has the right, to the exclusion of the other, to apply its statute, but whether the District of Columbia has a *sufficient* interest in the case to justify applying its statute; or stated another way, when can the District of Columbia constitutionally apply its statute to a particular work related injury. The inescapable conclusion is that any sovereignty having a legitimate interest in the injury and its effects on a workman, the employer or the community can apply its statute without violating due process of law or full faith and credit.

The existence of a legitimate interest in the injury and its consequences was held as the controlling constitutional test in this Court's decision in *Cardillo* v. *Liberty Mutual Insurance Company, supra.* In that case, the employee's residence, the employer's business headquaters and the original place of hiring, were all in the District of Columbia, while Virginia was the site of the current work, which had been going on for three years, and also the place of the injury. This Court, in stating its rationale, said at page 476:

> "A prime purpose of the Act is to provide *residents* of the District of Columbia with a practical and expeditious remedy for their industrial accidents and to place on District of Columbia employers a limited and determinate liability." (Emphasis supplied.)

The State in which the employer's business is localized has a relevant and legitimate interest in a compensable injury. While the place of the employee's residence or location at the time of the injury, as discussed above, carries great weight as to the benefits,

conversely the burden to be imposed also carries a legitimate interest. Thus, the community of the employer's business must carry the burden and has an interest in the amount and manner of imposing liability on the employer.

This Court, in *Cardillo* v. *Liberty Mutual Insurance Company, supra,* enunciated what is now known as the "employer-employee relationship" test. There at page 476 the Court stated:

> "In other words, the District's legitimate interest in providing adequate workmen's compensation laws for its *residents* does not turn on the fortuitous circumstances of the place of their work or injury. Nor does it vary with the amount or percentage of work performed within the District. Rather, it depends upon some *substantial connection* between the District and the particular employee-employer relationship, a connection which is present in this case. (Citing cases.) And *as so applied* the statute fully satisfies and constitutional questions of due process of full faith and credit." (Emphasis supplied.)

In *Cardillo, supra,* this Court held the District of Columbia had a substantial interest, and thus constitutionally could take jurisdiction and apply its "workmen's compensation laws", as under the facts of *Cardillo, supra;* i.e. the employee's residence, the employer's business headquarters and the original place of hiring, were all in the District of Columbia, while the accident had taken place in the Commonwealth of Virginia, the District of Columbia had a substantial interest in providing its residents with a remedy for their industrial accident and to place on District of Columbia employers a limited and determinate liability.

Turning now to the facts of the instant case, it is apparent that the injury accurred in Maryland, the Employee was a resident of Maryland, the contract of employment was made in Maryland, the majority of the Employee's work took place in Maryland (viz. sixty-two per cent (62%) in Maryland, thirty-two per cent (32%) in the District of Columbia, and six per cent (6%) in Virginia), the Employer is a Maryland corporation with its principal office located in Maryland, and has no office in the District of Columbia, and seventy-five per cent (75%) of the corporation's business was conducted in Maryland, as opposed to approximately eighteen per cent (18%) in the District of Columbia. There is no dispute as to the accuracy of these facts.

Under these facts, it is readily apparent that the District of Columbia had no relevant and legitimate interest in asserting jurisdiction. Constitutional requirements of due process and full faith and credit, as enunciated in *Alaska Packers Association* v. *Industrial Accident Commission,* 294 U.S. 532, 55 S.Ct. 518 (1935); *Pacific Employer's Insurance Company* v. *Industrial Accident Commission,* 306 U.S. 493, 59 S.Ct. 629 (1939); and *Cardillo* v. *Liberty Mutual Insurance Company,* supra, dictate that under this factual situation the Deputy Commissioner was correct in rejecting this claim for lack of jurisdiction.

The instant case squarely presents the issues left open in *Cardillo, supra.* These are important issues to both employers and employees. If the judgment of the United States Court of Appeals for the District of Columbia Circuit were to stand, chaos could well result in the administration of industrial accident claims. An insurance carrier could not determine the

proper premium rates based upon all available pertinent data, and no employer will have a fixed and determined liability. Under the rationale of the decison of the United States Court of Appeals, any employee, even though a non-resident of the District of Columbia, even though injured in another State, and even though the District of Columbia had no relevant interest in the outcome, could file his claim for compensation under District of Columbia law, as long as he and the employer had done some work within the District of Columbia in the past.

VII. CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that a Writ of Certiorari should issue to the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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